

COATESVILLE AREA SCHOOL DISTRICT

545 East Lincoln Highway
Coatesville, PA 19320

"Excellence in Education"

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
Request for Waiver of 60-day Appeal)
Deadline and Appeal of the) CC Docket No. 02-6
Administrator's Decision on Appeal)
by the Coatesville Area School District.)

REQUEST FOR WAIVER OF 60-DAY APPEAL DEADLINE AND REQUEST FOR REVIEW OF THE DECISION OF THE UNIVERSAL SERVICE ADMINISTRATOR

Billed Entity Name	Coatesville Area School District
Billed Entity Number (BEN)	126195
Funding Request Number (FRN)	1444270
471 Application Number	509428
Funding Year	2006
FCDL Date	Original FCDL – 9/19/2006 SLD Appeal Decision Date – 1/24/2007
Name of Contact Person for Appeal	Paul W. DeAngelo
Title of Contact Person	Assistant Director of Business Administration
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Request for Waiver of 60-day Appeal Deadline

The Coatesville Area School District hereby respectfully requests the Commission to waive the 60-day deadline to appeal an SLD appeal decision.

In early 2008, we contacted our State E-rate Coordinator, Julie Tritt Schell, to inquire why the District had not yet received funding for our 2007 E-rate funding requests. During her research, she

discovered that in two prior years – 2004 and 2006 – the District had not received E-rate funding for its lit fiber requests.¹ The 2006 funding denial is the basis of this appeal. Although the deadline to submit our appeal to the FCC was March 25, 2007, we believe that a waiver of the 60-day appeal deadline is in the public interest due to the large amount of funding at stake and we respectfully request that USAC grant us the opportunity to document and explain why the District's 2006 lit fiber request should be funded.

Summary of Appeal

The District's 2006 E-rate request for lit fiber service was denied because SLD concluded the contract was signed before the allowable contract date of the Form 470. This is not true. In completing its Form 471 application, the District committed a clerical error and listed the wrong Form 470 number which made it appear that the contract was signed prematurely - prior to the Allowable Contract Date. There was an establishing Form 470 number, with an Allowable Contract Date that *preceded* the execution of the contract. The establishing Form 470 and valid contract are attached as Exhibit A and B, respectively, as proof of that relationship.

Background

In Funding Year 2006, the Coatesville Area School District's funding request for lit fiber wide area network service from Sunesys (service provider), FRN 1444270, was denied on the basis that, "The Form 471 application was signed and/or submitted prior to the expiration of the 28-day waiting period from the day of the posting of the Form 470 to the SLD Web Site."

The District appealed the denial to the SLD, but the Administrator's Decision on Appeal stated the Decision was, "Approved, Funding Denied." Although we are unsure why the appeal was approved, but funding denied, we believe USAC was stating that while the multi-year lit fiber agreement with Sunesys was a valid contract, they were denying funding because that contract was signed before the Allowable Contract Date of the Form 470.

¹ The SLD recently approved the District's appeal relating to the 2004 funding request.

In fact, the District made a clerical error when they submitted their Form 471 because they listed the incorrect Form 470 number. Instead of citing the current year's Form 470 number (for the District's other priority one services), the District should have used Form 470 number 641960000340500 that was the establishing Form 470 on which the Sunesys lit fiber contract was based (See Exhibit A). That Form 470 was posted on December 21, 2000, with an Allowable Contract Date of January 18, 2001. In full compliance with the competitive bidding process, the District entered into a contract with Sunesys for lit fiber wide area network service, on January 18, 2001 (see Attachment B).

As background on this contract, the parties' agreement *initially* provided for the District's leasing of dark fiber service, which was eligible for E-rate discounts for Funding Years 2001, 2002 and 2003. Beginning with Funding Year 2004; however, the FCC concluded that unlit or dark fiber service was no longer eligible for E-rate discounts.^[1] In recognition of the fact that some applicants may have had multi-year dark fiber lease agreements, the FCC specifically allowed applicants and service providers to amend their agreements to convert them to lit fiber agreements. This is the precise situation describing the Coatesville Area School District's agreement with Sunesys. In compliance with the FCC's direction and guidance, the parties agreed that the wide area network agreement should be converted to a lease of lit fiber facilities. To accomplish this change, the parties agreed that beginning as of July 1, 2004, Sunesys took control of the WAN equipment associated with the District's network and became responsible for managing the Wide Area Network service including the associated electronics that lights the fiber.

These facts are relevant because the SLD erroneously denied the District's 2004 funding request for lit fiber service on January 24, 2005 stating that it was still considered dark fiber, a decision that was subsequently appealed to the SLD and overturned on appeal. As of the date that the Funding Year 2006 Form 471 was submitted, the District was under the impression that their appeal was still pending at the SLD. And as a result, the District's E-rate Coordinator was entirely confused and

^[1] Schools and Libraries Universal Service Support Mechanism, *Third Report and Order and Second Notice of Proposed Rulemaking*, CC Docket No. 02-6 (December 23, 2003) at footnote 156. See also SLD's Eligible Services List (October 10, 2003).

unsure which Form 470 should be used for fear that the establishing Form 470 may have in some way resulted in the denial of the 2004 funding request.

During PIA review of the FY 2006 Form 471 application, the mistake that the District inadvertently committed in citing the wrong Form 470 number for this FRN, was apparently detected by the PIA reviewer. But instead of informing the District contact that the wrong Form 470 had been used, they simply asked them to confirm that the Form 470 number was correct. Had the PIA reviewer (or the SLD appeal reviewer, when reviewing the District's timely appeal to USAC that was denied prior to the District's preparation of the current FCC appeal), done any one of the following steps, the District's clerical error could have been fixed, resulting in successfully funding this FRN, and avoiding the District's appeal to the SLD and this subsequent appeal to the FCC:

1. SLD could have simply reviewed the District's E-rate filing history from the prior year, where the District cited to the correct Form 470 application for the Sunesys contract; OR
2. SLD could have checked the Form 470 data base to see whether the District had the submitted Sunesys contract, dated January 18, 2001, and look on the SLD website under Funding Year 2001 to determine if a Form 470 had been posted prior to the signing of this contract; OR
3. SLD could have informed the District that the wrong Form 470 number was cited and that there was a valid Form 470 that should instead be used.

It is important to note that it is our understanding that PIA review procedures do not prescribe that PIA reviewers should engage in this kind of basic research or perform this kind of outreach to an applicant in order to correct an applicant's ministerial mistake of citing an incorrect form 470 on a Form 471 application, so as to reduce the need for applicants to appeal ensuing funding denials. Although PIA review procedures have been modified to reduce denials as a result of the recent FCC Orders and efforts undoubtedly have been made to make the program more applicant-friendly and to reduce denials, this is one area where a serious deficiency continues to exist. Occasionally a PIA reviewer will catch the mistake but when they do, they are apparently not permitted to inform the applicant that the wrong Form 470 number was used and given them the tools and information to

figure out what the correct Form 470 number should be. On occasion, PIA reviewers will verbally urge the applicant to contact their State E-rate Coordinator to seek guidance in the hopes that Coordinator will catch the mistake and provide the applicant with the correct establishing Form 470 number. But these occasions are rare and even when they do happen, the reviewer is not permitted to actually identify the mistake to the applicant. We believe that this is in direct contradiction to the directives given to USAC under the Bishop Perry Order (FCC 06-54, Released May 19, 2006). In that Order, the FCC directed USAC to:

"...provide all E-rate applicants with an opportunity to cure ministerial and clerical errors on their FCC Form 470 or FCC Form 471, and an additional opportunity to file the required certifications. Specifically, USAC shall inform applicants promptly in writing of any and all ministerial or clerical errors that are detected in their applications, along with a clear and specific explanation of how the applicant can remedy those errors. ... Applicants shall have 15 calendar days from the date of receipt of notice in writing by USAC to amend or refile their FCC Form 470, FCC Form 471 or associated certifications. USAC shall apply this directive to all pending applications and appeals even if such applications or appeals are no longer within the filing window."

This application was submitted February 14, 2006 and the Funding Commitment Letter was dated September 19, 2006 – a full four months after the FCC ordered USAC to inform applicants of any and ALL ministerial or clerical errors that are detected in their applications, along with instructions on how to fix the problem. Our Form 471 was clearly still pending as of May 19, 2006 and as a result, should have been included in the SLD's outreach and ministerial error-correction procedures.

The District takes full responsibility for making the initial clerical error that is at the root of this appeal. The District has sought ongoing E-rate expertise to augment its existing in house resources to ensure that such mistakes do not happen in the future.

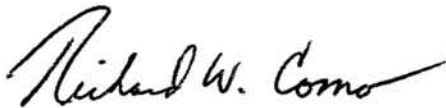
As a result of this funding denial, the District has lost more than \$108,000 in E-rate funding for this annual lit fiber wide area network service funding request.² Unlike other services that could be contingent upon E-rate, the District's communications network cannot be turned-off due to lack of E-

² A similar amount was denied in FY 2004. The District prevailed in its appeal to USAC, and in April 2008 was successful in its appeal to USAC to adjust the Form 486 Service Start Date, thanks to the Commission's Alaska Gateway Order, in order for the District to finally collect the reimbursement for FY 2004.

rate funding. The District has had to pay the full amount of the contracted lit fiber service from its budget – a situation that was not anticipated.

We sincerely appreciate the Commission's efforts over the last two years to make this program more applicant-friendly and to understand that the E-rate program rules are rigid and often unforgiving. Where an applicant has tried to commit fraud against the program or has wasted program resources, we fully understand the penalties that are imposed and funding that is lost. The Coatesville Area School District has, in no way, tried to defraud or cheat the E-rate program. The District has made every attempt to follow not only the letter of the law, but also the spirit of the program in not applying for excessive services and strictly abiding by all procurement rules and guidelines for E-rate eligible services. We respectfully request the FCC to approve our request to waive the appeal deadline and subsequently approve our funding request based on the information provided.

Respectfully submitted,

A handwritten signature in black ink, reading "Richard W. Como". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mr. Richard W. Como
Superintendent